

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8994 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE K.R.VYAS

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?
1 Yes, 2 to 5 No.

SABERABEN YUSUF MEMON

Versus

STATE OF GUJARAT

Appearance:

MS SM AHUJA for Petitioner
MR.HL JANI,APP for the Respondents.

CORAM : MR.JUSTICE K.R.VYAS

Date of decision: 16/06/98

ORAL JUDGEMENT

The petitioner, who is the wife of detenu Yusufbhai Hasambhai Memon, who will hereinafter be referred to as "the detenu", has filed the present petition challenging the order of detention dated 25-11-1997 passed by the Police Commissioner, Ahmedabad City , against the detenu under Section 3(1) of the Gujarat Prevention of Anti-Social Activities Act, 1985 (hereinafter referred to as "the Act").

In the grounds of detention ,it is alleged that the detenu had tried to extort Rs.20 lacs from the complainant Mahendrabhai Ambalal for which Criminal Case being registered as C.R.No.537/97 has been filed before the Ellisbridge Police Station for offences punishable under Sections 384, 511 and 506(2) of the Indian Penal Code. Besides the said criminal case, the detaining authority has also relied upon the two incidents of 24-10-97 and 3-11-97 wherein the detenu had tried to extort money from the witnesses whose identity has not been disclosed in exercise of the powers under Section 9(2) of the Act. Needless to say that the witnesses have stated that they were beaten and were dragged from their houses on the road with the result that the people gathered. The detenu in fact took out knife and rushed towards the crowd with open knife with the result the growd started running and, therefore, even tempo of life was disturbed. In view of this material on record, the detaining authority was satisfied that with a view to preventing the detenu from acting in any manner prejudicial to the maintenance of public order, it was necessary to detain him and, therefore, the order of detention came to be passed against the detenu.

Miss Sunita Ahuja, learned Advocate, appearing for the petitioner has raised number of contentions. However, it is not necessary to deal with all the grounds of challenge as this petition is required to be allowed only on the first submission made by her. It was submitted on behalf of the petitioner that the detenu is not a dangerous person within the meaning of section 2(c) of the Act and only one offence is registered against him and, therefore, the continued detention of the detenu is illegal. In my view the said contention is now concluded by the decision of the Supreme Court in M.J.Shaikh vs M.M.Mehta, 1995 (2) GLR 1268 wherein it is held the complicity of a person in an isolated offence is neither evidence nor a material of any help to conclude that a particular person is a "dangerous person" unless there is material suggesting his complicity in such cases which lead to a reasonable conclusion that the person is a habitual criminal. It, therefore, necessarily follows, that in order to bring a person within the expression "dangerous person" as defined in clause (c) of section 2 of the Act, there should be positive material to indicate that such person is habitually committing or attempting to commit or abetting the commission of offences which are punishable under Chapter XVI or Chapter XVII of I.P.C. or under Chapter V of the Arms Act and that a single or isolated act falling under Chapter XVI or

Chapter XVII of I.P.C. or Chapter V of Arms Act cannot be characterised as a habitual act referred to in Section 2(c) of the Act. In view of this it is clear that on the basis of the solitary incident registered against the detenu , he cannot be branded as a "dangerous person" within the meaning of clause (c) of section 2 of the Act, who can be said to have been engaged in activities which affect adversely or are likely to affect adversely the maintenance of public order. Even considering the two incidents as per the statements of the witnesses alleged against the detenu, I am of the view that even if the allegations made against the detenu are taken on their face value, it is difficult to comprehend that they were the incidents involving public order. They were incident directed against single individuals having no adverse affects prejudicial to the maintenance of public order, disturbing the even tempo of life or the peace and tranquility of the locality. Such casual and isolated incidents can hardly have any implications which may affect the even tempo of life or jeopardize the public order and incite people to make further breaches of the law and order which may result in subversion of the public order. In view of this, I am of the opinion that the satisfaction derived by the detaining authority branding the detenu as a dangerous person is not genuine and, therefore, the order of detention is vitiated.

In the result, this petition is allowed. The order of detention passed against the detenu is quashed and set aside. The detenu Yusufbhai Hasambhai Memon is ordered to be set at liberty forthwith if not required for any other purpose. Rule is made absolute accordingly with no order as to costs.

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